NOTES OF CASES.

Malicious Prosecution—Liability of Corporation—Acts of Agent.—A corporation is liable for a malicious prosecution by its agent, acting within the scope of his employment and in furtherance of his company's business, notwithstanding the company may not have expressly authorized or ratified his act. Fetty *v.* Huntington Loan Co. (West Va., April 23rd, 1912), 74 S. E. 956.

Note.—No Virginia or West Virginia case is cited, but in Transportation Co. *v.* Standard Oil Co., 50 W. Va. 611, 614, 40 S. E. 591, it is said a corporation is so liable. See 3 Va.-W. Va. Enc. Dig. 566.

Equity—Pleading—Amendment—Effect of Delay.—An amended answer, offered five years after the filing of the original answer, is properly rejected; no excuse or reason being given for delay. McSwegin *v.* Howard (W. Va., April 23rd, 1912), 74 S. E. 948.

Note.—The authorities cited for this ruling are, quoting from the opinion: Goldsmith *v.* Goldsmith, 46 W. Va. 426, 33 S. E. 266. No excuse was shown for delay. Foutty *v.* Poar, 35 W. Va. 70, 12 S. E. 1096; McKay *v.* McKay, 33 W. Va. 724, 11 S. E. 213. Viewed as a cross-bill, it came too late. No excuse was given for delay. Baker *v.* Oil Co., 7 W. Va. 454; Barton's Ch. Pr. 320; 5 Cyc. 653. This answer does not appeal to a court, because it reopens old transactions not in the bill or first answer.

Equity—Defect of Parties—Dismissal of Suit.—If a plaintiff in a suit in equity will not bring in necessary parties by proper amendment and process, within a reasonable time after being ordered to do so, it is proper to dismiss his suit. Bragg *v.* United Thacker Coal Co. (W. Va., April 16, 1912), 74 S. E. 946.

Note.—No authority is cited for this ruling, but the case of McMullen *v.* Eagan, 21 W. Va. 250, supports it. See 4 Va.-W. Va. Enc. Dig. 703; 14 id. 341.

Banks and Banking—Functions and Dealings—Representation by Officer—Notice.—Knowledge by one of the officials of a bank, acquired in a capacity other than as its representative, relating to infirmity in commercial paper offered for discount, is not notice to the bank when that official is also an officer of the corporation seeking the discount and has an interest in the transaction so adverse to the bank that the reasonable presumption is that he would not communicate the knowledge to it.

Note.—We seem to have no case directly on this point as to bank officers. See, however, 3 Va.-W. Va. Enc. Dig. 568, as to corporate

officers generally. See 10 Id. 585, where the case of Drug Co. *v.* Faulconer, 52 W. Va. 581, 44 S. E. 204, will be found, which holds the corporation bound if the officer also represented it, although he was acting fraudulently and in his own interest. American Nat. Bank of Bluefield *v.* Rizt (West Va., Feb. 27, 1912. Rehearing denied April 26, 1912), 74 S. E. 679.

Landlord and Tenant—Demise for "Two Years Certain and Thereafter from Year to Year"—When Terminable.—In re Searle, Brooke *v.* Searle (1912) 1 Ch. 610. In this case a lease for two years certain and thereafter from year to year until either party gives notice to determine the tenancy was in question, and the point to be determined was when it was terminable; and Neville, J., decided that it was not terminable at the end of the two years; but created a tenancy for three years at least, and that the term was only determinable by a three months' notice expiring at the end of the third, or any subsequent year.—English Case in Canada Law Journal.

Will—Construction—Gife for Life to Fourteen Persons—Substitutional Gift to Children—Gift Over of Whole on Death of Survivor of Thirteen Only—Death in Testator's Lifetime—Implication of Survivorship—Intestacy.—In re Hobson, Barwick *v.* Holt (1912) 1 Ch. 626. A peculiar will was in question in this case; the testator gave the income of his real and personal estate to trustees to divide amongst Sybil, the daughter of Charles Holt, and thirteen other named persons during their respective lives, and if any of them should die leaving children, the children were to take the parent's share, and he directed that after the death of the survivor of the thirteen (omitting the name of Sybil), the whole estate should then be sold and divided between the children of Charles Holt and the children of the thirteen named persons as might be living at the death of the last survivor of the thirteen, the children of any deceased child to take their parent's share. Two of the thirteen died in the lifetime of the testator, without leaving children, and Parker, J., held that the income of those two fourteenths had not been disposed of by the will and as to them there was an intestacy. His Lordship held that as the gift over was not on the death of all the first takers but only of thirteen of them, there was no survivorship, by implication, as to the shares in question in favour of the remaining twelve. He also held that the fact that those who were entitled under the gift over were also entitled to share in the estate prior to the period fixed for the distribution, also precluded the implication of survivorship.—English Case in Canada Law Journal.